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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,862	09/04/2003	Georg Mayer	944-004.033	8591
4955 7590 05/02/2007 WARE FRESSOLA VAN DER SLUYS & ADOLPHSON, LLP BRADFORD GREEN, BUILDING 5 755 MAIN STREET, P O BOX 224 MONROE, CT 06468			EXAMINER PHAM, CHRYSTINE	
			ART UNIT 2192	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/656,862	Applicant(s) MAYER, GEORG	
	Examiner Chrystine Pham	Art Unit 2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to Amendments filed on February 9, 2007. Claims 1, 10, 16 and 17 have been amended. Claims 18-19 are new. Claims 1-19 are presented for examination.

Response to Arguments

2. Applicant's arguments filed February 9, 2007 have been fully considered but they are not persuasive.

Per claim 1, Applicant contends, "Donohue does not disclose anything about a subscription" and asserts that Donohue does not disclose "receiving notifications regarding updates as they become available" (Remarks, page 7, last 2 paragraphs). However, the Examiner strongly and respectfully disagrees. As has been established in the previous Office Action (page 3), col.6:50-59 of Donohue explicitly teaches that the updater component (i.e., software update module) is an integral part of the products (i.e., software or application or computer program) they the updater component will server to update. The same passage explicitly discloses distributing the updater component together with an initial version of the products (i.e., software, application or computer program) to multiple users (i.e., multiple user terminals) in the network and that the updater component will automatically obtain and apply software updates in accordance with preset criteria. It should be noted that the preset criteria is defined by each user, who selects to receive all updates. Furthermore, in col.5:36-48, Donohue

explicitly teaches the preset criteria (also referred to as update criteria) is associated with the products' licensing terms and conditions (i.e., subscription), which ensures that the users (i.e., multiple user terminals in the network) have the most up-to-date software available. Col.11:5-45 further discloses the software product license (i.e., subscription) enables migration to all future version of the product (i.e., software). The same passage also discloses always selecting latest version and receiving notification of the availability of new versions. Needless to say, "subscription" (or subscribing to software updates) is inherent in Donohue's products' licensing terms and conditions (i.e., subscription), since without being subscribed to the software (which comes with its own update criteria) the users cannot set the update criteria, receive notifications regarding updates as they become available nor have the updates installed on the their computer terminals.

Per claim 3, Applicant asserts that Donohue does not teach sending update notifications simultaneously to plurality of user terminals (Remarks, page 8, first 2 full paragraphs). However, as discussed above, Donohue clearly anticipates distributing software products (which comes with products' licensing terms and conditions and update criteria), which when defined by the users (as discussed above) will automatically obtain and apply software update based on the preset update criteria (i.e., subscription request).

Per claim 10, Applicant similarly asserts that Donohue does not teach a plurality of user terminals that have at least one application in common (Remarks, page 8, 2nd to last paragraph). However, as disclosed in the Abstract, Donohue's invention is directed to improving the distribution of software updates to multiple users across the network. Furthermore, as discussed above, col.5:36-48 and col.6:50-60 clearly disclose distributing the software and their associated updater components to multiple users. Moreover, it is ludicrous that Donohue would have a network 100, servers 50 & 50' set up just to facilitate software update of one single user terminal 10.

Per claim 16, Applicant contends that Donohue does not teach "that a software update module requests an application profile from an application module[s]" (in situ) ... "and performs a comparison with one of the update notifications" (Remarks, page 8, last paragraph). However, these limitations are deemed inherent in the portions of Donohue that were cited as anticipating of claim 1. More specifically, since Donohue's updater component serves to obtain and apply update to its software, it is inherent that it receives the application profile (i.e., update version) from the new software in order to compare the update version with the versions of software that are currently installed to determine whether to apply the software update based on the preset update criteria (see at least 250-260 FIG.4A & associated text).

3. In view of the foregoing discussion, rejection of claims under 35 USC 102(b) and 103(a) are considered proper and maintained.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3-6, 8-14, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Donohue (Us 6,202,207 B1).

Claim 1

Donohue teaches a method of finding out about and downloading software updates (see at least FIGS.4A-B & associated text), comprising the steps of:

sending a subscribe request for software updates regarding an application of a user terminal (see at least 200 FIG.4A & associated text), receiving an initial notify message having content defined by an event package, the initial notify message describing at least one available software version (see at least 230-240 FIG.4A & associated text), checking if the user terminal has the available software version (see at least 250 FIG.4A & associated text), and if not then automatically downloading an update to obtain the available software version (see at least 280 FIG.4B & associated text), or giving the user a choice whether to download and obtain the available software version (see at

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least 410, 260 FIG.4A & associated text), receiving a further type of notify message having content defined by the event package, the further type of notify message describing at least one newly available update (see at least 290-400 FIG.4B & associated text), and downloading the newly available update (see at least 310 FIG.4B & associated text) unless the user gets and exercises an option to not receive the newly available update (see at least *preset criteria, software updates* col.6:50-59), wherein the at least one available software version was available to subscribers prior to the standardized subscribe request (see at least 410 FIG.4A & associated text), but the newly available update is newly available to subscribers when the further type of notify message is received (see at least 290-350 FIG.4B & associated text).

Claim 3

The rejection of base claim 1 is incorporated. Donohue further teaches wherein the further type of notify message is sent substantially simultaneously to the user terminal and to other user terminals (see at least *updater component, synchronizing updates* col.4:5-col.7:30), but wherein the initial notify message is sent only to the user terminal and is sent to the user terminal substantially immediately after the standardized subscribe request is received and acknowledged (see at least 410, 200-260 FIG.4A & associated text).

Claim 4

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The rejection of base claim 1 is incorporated. Donohue further teaches wherein the steps encompass, or are also performed for, at least one other application of the user terminal (see at least 30, 20, 30', 20' FIG.1 & associated text).

Claim 5

The rejection of base claim 1 is incorporated. Donohue further teaches wherein the subscribe request is sent to a centralized software server in the network (see at least 200, 220, 340, 10, 40, 90, 80 FIG.3 & associated text).

Claim 6

The rejection of base claim 1 is incorporated. Donohue wherein the subscribe request is sent to a respective server of a software provider (see at least 50, 50' FIG.3 & associated text).

Claim 8

The rejection of base claim 1 is incorporated. Donohue further teaches wherein the sending step and the receiving step are each followed substantially immediately by transmitting an okay response (see at least FIGS.4A-4B & associated text).

Claim 9

Donohue teaches a computer-readable medium or media for use in a user terminal, the medium being encoded with a data structure for performing the method of claim 1 (see

at least 20 FIG.3 & associated text).

Claim 10

Claim recites a system version for performing the method, which has been addressed in claim 1, therefore, is rejected for the same reasons as cited in claim 1.

Claim 11

The rejection of base claim 10 is incorporated. Donohue further teaches wherein the at least one application includes applications from at least two software providers (see at least 50, 50' FIG.3 & associated text).

Claim 12

The rejection of base claim 10 is incorporated. Donohue further teaches wherein the event package requires at least one set of information as to software name, update server address, update retrieval protocol, and latest version (see at least FIG.2 & associated text; 210-230 FIG.4A & associated text).

Claim 13

The rejection of base claim 10 is incorporated. Donohue further teaches wherein the software server is a centralized software server (see at least 50, 50' FIG.3 & associated text).

Claim 14

The rejection of base claim 10 is incorporated. Donohue further teaches wherein the software server is a software provider server (see at least 50, 50' FIG.3 & associated text).

Claims 16 and 18

Claim recites limitations, which have been addressed in claim 1, therefore, is rejected for the same reasons as cited in claim 1.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 15, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donohue in view of Lauzon et al. (US 7,050,861 B1, "Lauzon").

Claim 2

The rejection of base claim 1 is incorporated. Donohue further teaches wherein the event package requires at least one set of information as to software name, update

server address, update retrieval protocol, and latest version (see at least FIG.2 & associated text; 210-230 FIG.4A & associated text). Donohue does not expressly disclose does not expressly disclose wherein the method utilizes and is formatted based upon an application layer protocol known as Session Initiation Protocol. However, Lauzon discloses wherein the method of upgrading software which utilizes and is formatted based upon an application layer protocol known as Session Initiation Protocol (see at least col.19:8-35). Donohue and Lauzon are analogous art because they are both directed to downloading software updates. It would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to incorporate the teaching of Lauzon into that of Donohue for the inclusion of SIP. And the motivation for doing so would have been facilitate easier and faster upgrades for SIP clients (see at least Lauzon col.9:60-col.10:37; col.19:8-25).

Claims 15, 17 and 19

Claims recite limitations, which have been addressed in claim 2, therefore, are rejected for the same reasons as cited in claim 2.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Donohue in view of Crawford (US 7,080,051 B1).

Claim 7

The rejection of base claim 2 is incorporated. Donohue further teaches wherein the information further includes a latest update date (see at least *Last_Growth_Time* col.19:10-30). Donohue does not expressly disclose wherein the information further includes an update price. However, Crawford discloses a method and system for purchasing (i.e., downloading) software updates wherein the user is presented with a software update charge (i.e., update price) before the actual downloading (see at least 436, 438, 444 FIG.8B & associated text). Donohue and Crawford are analogous art because they are both directed to software updates. It would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to incorporate the teaching of Crawford into that of Donohue for the inclusion of update price. And the motivation for doing so would have been to facilitate online support services (i.e., release update services) for customers (see at least Crawford Abstract).

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory

period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chrystine Pham whose telephone number is 571-272-3702. The examiner can normally be reached on Mon-Fri, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on 571-272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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